

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, July 2, 2012
Kitty Hawk Town Hall, 6:00 PM

AGENDA

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation by Joe Freddoso, President and CEO of MCNC.
5. Public Comment
6. Consent Agenda
 - a.) Approval of Minutes. June 4, 2012 Regular Meeting Minutes
 - b.) Revenues and Expenses Report for May
7. Items Removed from the Consent Agenda
8. Public Hearing
 - a.) Zoning Amendment: Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1).
 - b.) Text Amendment: Proposal to add Section 42-250(c)(34) allowing "pet grooming and boarding facilities" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.
 - c.) Conditional Use Permit: Application for a conditional use permit application to renovate the existing buildings on the former Sea Me Grow day care property at 108 W. Sibbern Drive for use as a pet grooming and boarding facility.
9. Return to Regular Session
10. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to add Subsection 42-250(c)(34) allowing "electronic gaming operations" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the August 6, 2012 Town Council meeting.
 - b.) Call for Public Hearing. Text Amendment: Proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments, provided that certain criteria are met. A public hearing is requested to be scheduled for the August 6, 2012 Town Council meeting.
11. Unfinished Business
12. New Business
13. Reports or General Comments From Town Manager
 - a.) Charter Cable Update
 - b.) Pedestrian Signal at Juniper Trail and US 158
 - c.) Purchase of Ocean Rescue Truck
14. Reports or General Comments from Town Attorney

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 2

- 15. Reports or General Comments from Town Council
- 16. Public Comment
- 17. Adjourn

COUNCIL MEMBERS PRESENT: Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

STAFF MEMBERS PRESENT: Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey, and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called the meeting to order at 6:00 p.m. and welcomed everyone in attendance.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

MPT Perry made a motion to approve the agenda as promulgated. Councilman Bateman seconded the motion. Councilwoman Klutz asked about adding an agenda item to number thirteen and it was explained the agenda did not have to be amended for the item. **Vote was unanimous to approve, 5-0.**

4. PRESENTATION

Joe Freddoso, President and CEO of MCNC. Expansion of the North Carolina Research and Education Network (NCREN). Fiber Build Out in Dare County and Possible Connection by Kitty Hawk

Freddoso: *I was asked to come before council this evening and talk about a State wide project we are working on at MCNC. It is basically building fiber optic infrastructure throughout rural North Carolina. I want to talk to you about the project and its applicability to Kitty Hawk and to the Outer Banks.*

MCNC is a 501(c)3 non-profit organization and our main task is to run a broadband infrastructure called North Carolina Research and Education Network. This is a statewide fiber optic network and we basically serve what are called Community Anchor Institutions. We are the access network for the 17 institutions of the UNC system, all 115 local school districts, all 58

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 3

community colleges in the state, and about 30 charter schools. For the last couple of years we have also branched into health care through something called the North Carolina Telehealth Network which we run on our infrastructure. We have about 23 non-profit hospitals that are connected to the backbone and hope to grow to about 40 by the end of the year. We have about 55 county health agencies that are also connected.

All of these clients use us as their network to talk to each other and we keep that tracking inside the state. If NC State or UNC Chapel Hill wants to transfer data from their Coastal Studies Institute back to Raleigh or Chapel Hill for analytics and analysis it happens over an exclusive fiber network that is a direct connection. So they use it to talk to each other and then we also bundled all of their demand for commercial internet access. It is also how students get to Google. All of that traffic is bundled and then we buy internet access in commodity for them at a much cheaper price than what they could do alone. We are really their exclusive kind of broadband network.

As we started to look at the broadband demand of these institutions about five years ago we really saw great growth. A couple of examples are the first year the community colleges were on the network they doubled their bandwidth use in a year. The 115 local school districts across the state used seven times the amount of internet access than they did five years ago. And the university system grows its demand 30 to 40 % per year. A lot of this was coming from rural institutions much was coming from Dare County schools. Much of it was coming from those school districts that had to use technology more and more because they did not have qualified teachers in the classroom and it would be supplemental to what they were doing. There was a lot of implementation of virtual curriculum over time and we only see that growing in the future. We started to outrun the capacity of what the typical name service providers had in rural North Carolina.

We were leasing bandwidth in the rural part of the state from those providers but what we really needed was to control our own fiber so we could keep up in demand with these institutions. We found these providers did not over build any fiber and in fact their fiber did not reach where we needed it to go to reach these rural school districts and other things. We offered to partner with them. We offered to do a bunch of things but when you started to look at the private sector model and what Wall Street was holding them accountable to, there just was not a good business case for them to build additional fiber in rural North Carolina. It just did not make sense to put a lot of plant in to improve internet access for businesses for these anchor institutions or others because they could not get the return that Wall Street expected from capital dollars that they would spend. It is an old economic issue.

About that time, unfortunately for all of us, there was something called the banking crises, the financial crises and we went through a recession that we had not seen, an economic period that we had not seen since the Great Depression. Part of the plan to recover was putting money into infrastructure like broadband from the federal government and we took advantage of that. We had to raise about 30% of the funding on our own. We had to raise matching funds to tap into

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 4

the US Department of Commerce's money they had set aside for broadband infrastructure and we were successful in doing that. We have a small endowment at MCNC and we put in about 10 million dollars of our own money. The Golden Leaf Foundation put in another 24 million. We had a couple of private sector carriers who were not really governed by Wall Street and they put in money to own some of the fiber as we made the build. We raised 40 million dollars of private funding and drew down 104 million dollars of federal funding and started the largest investment in middle mile broadband in North Carolina's history.

I am really pleased to say we are progressing faster than any of the other 300 or 400 awards in the country. The total project touches 82 counties, mostly rural counties and is 1,750 miles of new fiber. Wherever we found fiber around the state that went contiguously, where we needed it, we did not overbuild that, we just acquired strands on those runs. We dealt with a lot of electric membership co-operatives, small cable companies, and small telecom companies throughout rural North Carolina to acquire strands of fiber on something called an IRU. I am sure the town attorney is familiar with the term "Infeasible Right of Use." We have 20 years of ownership of that dark fiber. We cobbled together something to create this and will finish by January 2013. We are about three quarters of the way done.

We won funding in two rounds with the first round covering the southeastern part of the state, west of Asheville and back to Charlotte and Winston-Salem. We finished that about 9 months ahead of schedule and about 8 million dollars under budget. The good news is the feds are allowing us to reapply that 8 million dollars that we saved into building additional little laterals off the main and doing some other things. The second round was a much larger project. It is a 104 million dollar project. I was driving with my children on US 64 today to get here and as we were going through Plymouth there were two crews working on the project. It was pretty cool to see that and I stopped the car and took pictures. We are about three quarters of the way done with the second round.

To give you an idea of what is going to happen on the Outer Banks construction is complete on all the bridges. You may have noticed this winter there were crews working on the Wright Memorial and on the Virginia Dare bridges. They were putting a steel pipe on the bridge and then putting a conduit with fiber inside that steel pipe. We have 288 strands of fiber going through those bridges. That is an extreme amount of fiber but DOT told us they only wanted to approve somebody attaching to the bridge once. They knew we were kind of a public benefit, non-profit, that we would not try to gauge anybody with those strands going across the bridges long term and they figured we were a great trustworthy organization to kind of manage that moving forward and we will live up to that. The 16 miles of bridge construction is done and we are working on the feeders to feed into the Outer Banks. We will start working on the Outer Banks proper after tourist season. Basically the fiber will follow US 158 in between the two bridges, in between the Wright Memorial Bridge and the Virginia Dare Bridge. That will probably take us until December or January to complete and then the fiber will be serviceable and in use.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 5

A couple of things Manager Stockton asked me about are the opportunities for the town to interconnect with this fiber for local government agencies. I think it has to make sense for you in comparison to what you are paying today but we are more than willing to work with you. In terms of emergency management this is all buried cable across the state to get to the interconnect points. That may increase the reliability. The other thing is that on the bridges, the fiber is all in steel piping and we have redundant routes because we are coming in from the north and the south. So if a fiber gets cut in the middle we can still route out the other way. We provide bandwidth and internet access only through our contracts. The state ITS is the town's voice provider and we work with them all the time. We could discuss with them how to keep your voice service up and running even if you switch providers. So there are a lot of options for the town and we pledge to work with you.

A couple of things people ask me all of the time is what is this going to do for rural broadband because our scope is basically servicing the Community Anchor Institutions. We do not serve consumers and we do not serve commercial businesses off this fiber. We leave that to the private sector providers. But what we have essentially done is we will have capacity for those private providers to offer you better service at a cheaper price if they take advantage of it. We are bringing this infrastructure closer to them, closer to the markets than it has ever been before. And we have to set a very low price for them to access this fiber as part of the terms of the agreement with the federal government. And anything that we make from that goes back towards us providing service to the schools, the libraries, the universities, and the hospitals. It is a pretty good system for us, but again, it brings this infrastructure much closer to you than it has been in the past in a much more reliable way. It should also reduce the cost of operation for companies whether it is CenturyLink or a small local provider that wants to get started in the internet business. We are happy to help anyone that comes to the table and wants to take advantage of it.

As most of you know if you are involved in economic development, broadband infrastructure has joined water, sewer, and roads as a key item in companies making their decision in job growth and tourism and all kinds of other things that impact you all and we are here to help. It is quaint to say we are from RTP (Research Triangle Park) and here to help but we really are. We have put our effort and money where our mouth is in that we have made this investment, there has been no cost to the state, no cost to local governments, and we have put it out there and we hope folks take advantage of it. It has allowed us to serve 3 million students a day on the network and 23 hospitals and 55 public health agencies. Again our pledge is to work with you if you want to explore using service, interconnecting with this fiber, and frankly we would love to have you on the network. I would be more than happy to entertain any questions.

Mayor Perry: *Did I understand you to say the town would have to contract with a local company to get from your cable to us.*

Freddoso: *Not necessarily. We are close enough to you that if the town invested in a lateral down the road from US 158 you could interconnect directly and you could service directly from us.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 6

Mayor Perry: *How would we connect to the fiber?*

Freddoso: *You could do it a couple of different ways. We likely cannot afford to build the lateral within the budget that we have right now. You could do it with a last mile provider building the last mile or you could make the investment yourself if it is for city services and other things. You could make the investment in running the cable down the road. It is not really that difficult a task. You dig three feet underground and go up to an interconnect and basically plug in fiber to an interconnect point which will be at US 158. There is an option to do it for town services and there is an option to get a local telecom involved to give you that last mile.*

Klutz: *I get the impression this is being done with stimulus money.*

Freddoso: *About two thirds of the money is stimulus and then another one third was what we raised.*

Klutz: *And Golden Leaf is the tobacco settlement isn't it?*

Freddoso: *That is the tobacco settlement. They are supposed to dedicate it to rural economic development and they thought this was a project worthy of it. To show you how our relationships work we have a centralized contract with the university system, with the Department of Public Instruction, and with the Community College System to serve all those endpoints. They pay us centrally to serve those institutions and we bid for those. Even as a non-profit we go through a competitive bid for all those contracts.*

Klutz: *And on the slide it said you needed operating funds.*

Freddoso: *Those were the operating funds from those contracts that I just mentioned.*

Klutz: *How is it working?*

Freddoso: *It is working really well. We have been financially stable for a long time and the network has been telecom class for the last 10 years which means we meet five nines.*

Klutz: *And if we got involved in this we would then ... where is the help line?*

Freddoso: *We run a 24 by 7 network operation center in Research Triangle Park that is staffed by engineers. And ours is a bit unique in that you get somebody on the phone right away that can solve the problem 24 hours a day. Our headquarters are at Cornwallis and Alexander in RTP.*

Mayor Perry: *And your cable across the bridge is steel cable and you would have ...*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 7

Freddoso: *It has a steel pipe and then we ran a two and a half inch plastic conduit through it and then the fiber goes into the conduit.*

Mayor Perry: *And then the plastic would be in the ground...*

Freddoso: *The plastic will be in the ground out here. And for your local businesses when we come to a driveway we actually bore under the driveway rather than interrupt anything. It is a three foot deep hole and is buried.*

Mayor Perry: *Any other questions? Thank you for coming.*

Freddoso: *Thank you all for having me. It is fun to talk about and we hope this presents a great opportunity. I have a couple of folks who joined me, our local group of broadband innovators, Paul Tine and Noel Preston. They formed NorthEast Rural Broadband and we have met many times over the last couple of years. Paul and Noel are really enthusiastic about hopefully bringing this to help economic development on the Outer Banks. Thank you for all of your help.*

5. PUBLIC COMMENT

There was no public comment.

6. CONSENT AGENDA. Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

a.) Approval of Minutes. June 4, 2012 Regular Meeting Minutes. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

b.) Revenues and Expenses Report for May. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

Councilwoman Klutz moved to approve the consent agenda and Councilman Reid made the second. The vote was unanimous, 5-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed.

8. PUBLIC HEARING

Michael: *I think we should take each public hearing item separately and the first order of business would be for the council to make a motion to vote to go into public hearing.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 8

MPT Perry “so moved” to go into public hearing. Councilman Bateman seconded and it passed unanimously, 5-0.

a.) Zoning Amendment: Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1).

Heard: *We potentially have three public hearings this evening and to clarify all are related to the same project. The first one is a rezoning request for property at 108 West Sibbern Drive, the second is a text amendment to allow dog grooming and boarding in the Beach Commercial District, and the third item is a conditional use permit of a site plan for the use of the property at 108 West Sibbern. Unless all three of those items are approved the proposed use would not be able to move forward. It would take approval of all three for the applicants to do what they are proposing to do but council could choose to approve certain things and not others. For instance council could make a decision that rezoning the property to commercial is appropriate but that this particular use was not appropriate. Council could consider that dog grooming and boarding is a use that should be allowed in the BC-1 district but find this particular property is not suited for it and then deny the conditional use permit. If either of the first two, the rezoning or the text amendment is denied, then the conditional use permit is a moot point and there would be no need to hold the hearing for it.*

There is a map showing the area presently zoned Beach Commercial One in red and the area along US 158 is white and is zoned Beach Residential One which is mainly a single family residential district. The area in orange is Beach Residential Two which allows single family but also has some provisions for a slightly higher density, multi-family residential use. Across the street on the east side of the highway in the area colored blue is a Beach Hotel District at the southern end of town.

The subject property considered for rezoning is the one that is bordered in red on the map. A portion of the front property is already zoned Beach Commercial and that includes the front building on this property, the eastern most building. About two thirds of the property, the remaining portion of the property, is within the orange and is zoned Beach Residential Two. The business that was on the property, the day care, was a non-conforming business and it was grandfathered and allowed to continue to operate as long as they were operating. It has been vacant now for over a year and the right to continue as a day care facility has been lost.

Something that does not show up on this map is that the subject property is treated as one parcel by the Dare County Tax Department but is actually two separate parcels of land. The front parcel, the eastern most parcel, is presently split zoned BC-1 and BR-2. The rear parcel, the rear half of it is completely within the BR-2 district.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 9

Klutz: *That is the dotted line where you have it outlined in red? The front lot is the dotted line ... it is not the commercial versus the residential district. It goes through the middle of that lot?*

Heard: *That is correct. About two thirds of that lot is zoned commercially and a third residentially. It is actually shown more clearly on a survey that we have related to the conditional use permit. If we need to I can pull it up and show it.*

Klutz: *The corner which would be at the southern corner has a little spur from the second lot and that is BR-2?*

Heard: *That is correct.*

Klutz: *The eastern lot does not take up the whole width on the residential part of the combined parcel which I know is not divided.*

Heard: *Correct. Both parcels have frontage on the cul-de-sac at the end of Sibbern as it is drawn here.*

Klutz: *And the cul-de-sac is part of the public road and ...*

Heard: *That is correct. Sibbern is a town maintained street.*

Klutz: *It really looks like a private drive.*

Heard: *We do claim it on the Powell Bill map and have maintained it. As mentioned before the difference in the two districts are mainly that the BR-2 district is multi-family residential with a few limited commercial uses. The BC-1 district being proposed for the remainder of the property is mainly a commercial district that does not allow multi-family use. In looking at the proposal and looking at the area around it there is a large parcel located directly behind this. Over an 8 acre parcel that is presently undeveloped and zoned BR-2. There are a couple of residential properties that abut the subject property, one of which is a larger property that goes from Tateway and backs up on the north side and contains a duplex. The only property that directly abuts it is off of Sun Rise View Drive. There is a single family residence that backs up to the property and there is a single family residential neighborhood located in that area. Along the south side of Jejac Drive there are a series of lots zoned Beach Residential One and are developed with single family residences. Directly in front of the subject property are two commercial parcels. One contains Seto's gas station and auto repair and to the north of that is Outer Banks Furniture.*

MPT Perry: *If you go to the Kill Devil Hills line, on the south side of the line, there is a whole row of houses. They are not in Kitty Hawk but they are close to this piece of property.*

Heard: *That is correct.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 10

Mayor Perry: *Their property line in the rear is in Kill Devil Hills.*

Heard: *It is not split by the road; it is split by the rear property lines.*

MPT Perry: *The point I am trying to make is there are many houses in Kill Devil Hills that both see and hear whatever goes on with this piece of property. There is a whole row of them and that is not being plainly explained. What are the lines that "loop di loop" in the red dash line on the map?*

Heard: *It is part of the notation that it is BR-2 ... it is the "2" in BR-2.*

MPT Perry: *It is not clear and I wanted to be sure it got on the record. Thank you.*

Heard: *One of the factors the council and the town typically consider in looking at a rezoning request is the Town of Kitty Hawk's adopted Land Use Plan. And in this case ... down in the corner ... it is challenging to see clearly but in this area in the corner ... in looking at the future land use map in the Land Use Plan ... it was being envisioned as a stretch of commercial area that is consistent with the existing BC-1 district. Then right here on the map is ... you can see how it juts out and encompasses this property in the commercial area. The plan calls for this, at least on the future land use map, to be a commercial shopping and working area and it encompasses both of the parcels in that area. You can see how it juts out.*

Mayor Perry: *On the east side of 158 where the hotel zone is. Is that also future BR-1? Is it possibly a future change to ... from a hotel? Is that what it is saying?*

Heard: *The Land Use Plan does not correlate to specific commercial districts. It is just saying that is an area that is suitable for commercial shopping and working areas. It is not ... ties specifically to a certain district like BC-1 or BH-1 or anything like that.*

Mayor Perry: *But now it is hotel.*

Heard: *The present zoning of it is Beach Hotel One.*

Mayor Perry: *So it is saying ... it is possibly ... in the future it could be changed to something else.*

Heard: *That is something council could consider.*

Mayor Perry: *That is what it indicates to me.*

Heard: *The plan does note that and the only other information I wanted to pass along are a few of the items from the planning board's meeting. The planning board considered this application on May 17th and voted 3 to 2 to recommend approval to the council to rezone the remaining*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 11

portion of the property at 108 West Sibbern Drive. The staff report has tried to cull some ideas from the minutes of that meeting to show why the board members voted as they did; both pro and con. That is all the basic information I have and will be glad to answer any questions as we go along.

Michael: *Has anyone signed up to speak?*

Morris: *We do have people signed up but I do not think it was for this public hearing.*

Michael: *Ladies and gentlemen, at this time you have an opportunity to speak to this zoning amendment, not any other items that are on the agenda tonight. Is there anyone present who wants to speak to this? Please come up and identify yourself and where you live.*

Stan Clough, 1104 9th Avenue, Kill Devil Hills, NC: *Good evening my name is Stan Clough and I am representing the future owners of this property, the prospective business operators of it. If you have any questions during this please feel free to ask me. I think it is an ideal location for this business and since it was operated as a day care for 30 years we are just switching from taking care of children to taking care of animals. If you have any questions please feel free to ask.*

Michelle Brinn, Chesapeake, VA: *Good evening my name is Michelle Brinn and I actually live in Chesapeake, Virginia and am a property owner with my husband at 302 Cameron Street in Kill Devil Hills. We are one of the property owners that you are speaking about that actually overlooks the site that is intended for this proposal. We do have concerns in this matter as our property does not specifically ... we cannot see it back to back however the elevation of our property allows us the opportunity to view things from above and therefore any barriers that are put up are not going to do any type of good for us because we are still going to see this view from our back porch.*

As this is our second piece of property, it is not our permanent home, we were not informed. We just found out about this by word of mouth from a friend that mentioned it to us. It became a concern and I immediately called and found out more information.

We have concerns about the barking and I find it difficult to compare children ... I am an educator and I find it difficult to compare a facility for children with a facility for taking care of animals. The sound of children playing was a wonderful sound in the mornings. We could open up our windows and when the wind blows in a certain direction you hear the lovely sound of children playing. However my concern is when we open up our windows and we sit on our back porch or our front porch the sound of dogs barking and things like that. That is a concern as well as the aroma and the smells that may come from this particular situation.

I am all about businesses. We are business owners ourselves. However I just do not feel like this may be the setting for this particular activity. So we do have concerns about that.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 12

Also if this were to be passed some of the things that they are talking about doing later ... for example lighting. That was not even brought about however if that does come about that is quite a concern. If we look out our back door and we see the yard lit up ... that is not something we want to come to the beach to view. We feel it would make our property value not well and we do not feel like our neighbors were informed. We are on the 302 Cameron side so it is not something that ... I do not read the newspaper here and we did not get any type of mailing to our homes about it so I am not quite sure that anyone was properly informed about this particular situation. The hours they said it would be open 24 hours a day, 7 days a week, with an attendant. So therefore of course I know what a kennel ... I love animals I live in Chesapeake on a farm and we have chickens, dogs, so I am very well aware of what animals ... what it takes to take care of them and all that. It is a concern, and again, I am not against businesses and growth and things like that. It is just ... I do not feel like this may be the setting for this particular situation. I hope you will consider our concerns and hopefully ... moving forward with it. I agree with the noise issue. With this being such a large place it is a beautiful setting. However it does have a lot of room for growth and with it moving in and being small it has such potential for growth and I can see it being an issue. I agree with all of the different members that were voting in opposition and I appreciate your concerns as well ... on our behalf and those who were for it. Again, it is just difficult to compare children, a beautiful facility for children.

I would love to see it become a day care center again however I do not feel like the setting for a dog grooming or boarding situation would be in its best interest at the beach. I would like it to remain the beach and the wonderful sounds of the ocean and things like that. Thank you for your time and please consider our concerns and have a nice evening.

Michael: *Thank you. Is there anyone else who wants to speak? Remember we are only talking about rezoning this property to the BC-1 district. There does not seem to be anyone else who wants to speak.*

Klutz: *Is it appropriate to ask the young lady...*

Michael: *We are in public hearing so you can ask questions.*

Klutz: *I understand your opposition to the business which is being recommended for this site. Do you have an opinion on the rezoning of that parcel? What they are recommending is that the part of the parcel that is in the yellow area right now would be rezoned to Beach Commercial One which means there are a number of permitted uses in that particular commercial zone. The dog business is not one of them. This is changing it from a residential multi-family to a commercial district.*

Brinn: *I would like for it to stay the residential.*

Klutz: *All right. Thank you.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 13

Brinn: *A lot of the owners that are in the area have owned the property there for many years and I would just like for it to stay a quaint neighborhood. It seems more like a neighborhood of people that are retired or who have lived there for some time. It is not ... it does not seem more of a rental of coming and going type place so I would like it to remain one of the quaint areas that we have. And I am sorry if I did not speak on the right thing. I apologize.*

Klutz: *I was curious if you had an opinion on the rezoning as well.*

Michael: *Come up. Please identify yourself and where you live.*

Pam Warner: *I am the proposed business owner of the project and I want to correct a couple of things. We are not going to be open 24 hours a day. We have set times when the kennel will be open.*

Michael: *Mrs. Warner we are just talking about the rezoning right now. You may want to save your comments until we get to your specific proposal unless council has a question for you about the rezoning only. Is there anyone else who wants to speak just strictly to the issue of rezoning this to BC-1? There does not seem to be any other comments.*

MPT Perry: *I have a question for Joe. Did the Kitty Hawk residents adjoining this property get notified?*

Heard: *Every one of the adjoining property owners was sent a written notice as well as the applicant per the town's ordinance and State law.*

MPT Perry: *Thank you.*

Mayor Perry: *When you say adjoining property owners, does that mean the ones across the street on Jejac?*

Heard: *It does not. It would include this parcel, these two, two up front and the county properties across the way.*

Mayor Perry: *That is creating a problem.*

MPT Perry: *Yes it is.*

Klutz: *That is the only requirement for a rezoning. You have to be abutting the property line.*

Heard: *That is the standard that council has adopted for notice for rezoning and conditional use permits.*

Klutz: *And we can change that?*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 14

Reid: *I believe that follows the State law. It requires you to notify the immediately adjacent property owners and then I think you are also required to put an ad in the paper.*

Heard: *There were two ads published in consecutive weeks and the property was also posted. If the subject property abutted Jejac we would have notified the people directly across Jejac and in cases where there is a corner we always notify them. If there is ever a question we send the notice.*

MPT Perry: *In the future if we have a situation like this where we know the people across the small street would be impacted one way or the other ... is there anything that keeps us from using common sense and notifying those people as well? Forget law.*

Heard: *We can notify more than the minimum.*

Michael: *Is there anyone else who wants to speak? That seems to be everyone.*

Mayor Perry: *Do we need to go back into regular session?*

Michael: *You can have your discussion now and leave the public hearing open in case you want to ask Joe or one of the speakers another question or you can close your public hearing and go straight to your deliberations or motion. Either way.*

Councilman Bateman made a motion to go back into regular session and MPT Perry seconded the motion. The vote was 5-0.

Reid: *I worked on, I think, three of the Land Use Plans in the last 15 years or so and my recollection was that for the most part the plans, as far as future land uses, reflected pretty much what is existing now. Other than a couple of very small adjustments to the commercial zoning, the town has not expanded any of the commercial. Wal-Mart and Home Depot were zoned when I came and were reflected in the Land Use Plan at that time. So when I first looked at this I really was surprised because I thought the Land Use Plan followed the existing zoning line. This came as a shock to me that it actually went back there and included this property. The only thing I can think of is perhaps it was thought the Land Use Plan should reflect what is existing and at that time it was a non-conforming day care. I am assuming something like that was the thought in doing it.*

I am struggling with the idea of expanding the commercial. The one thing the Land Use Plan does not address is the timing of what the future land use should be. Timing does become a critical thing when you are talking about future Land Use Plans. I accept and understand that according to the staff report and the maps and all that that our current Land Use Plan does show this as commercial but I am struggling personally with whether or not it is the time to do it. Maybe at some future time would be a better. That is where I am coming from. I accept that it is

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 15

in accordance with the plan but I am struggling with the time sequences. Whether it is really the appropriate time to expand commercial.

Mayor Perry: *What I remember is we have been asked several times to expand it further to the west to give them more room and we have denied it every time. And have not expanded it back into residential areas. That is where I have trouble with it. If I were going to vote for this I would certainly want to make sure everybody in that whole vicinity had a chance to voice their opinion. I do not at this time want to expand it not knowing what may go there. We have no control over what goes in there. Anything that is in BC-1 could go there so I am not in favor of that at this point.*

Klutz: *When I went over there I was struck by the fact that there was already so much commercial activity in that area including the buildings for the day care. The one residential property that actually backed up to that particular lot was just about completely hidden by some tall vegetation. Having listened to Richard's comments and talking with the mayor I am torn. The thing that troubles me the most is that one parcel has partially residential and partially commercial and I wonder how that ever winds up happening. Is there enough ... I guess the one building on the east side of the property is on that ... in the commercial part of it. Is that correct Joe?*

Mayor Perry: *I do not think we can go back and ...*

Klutz: *I cannot ask him that?*

Mayor Perry: *It is not a conditional use so we may go back. Can she ask Joe something now?*

Michael: *No.*

Klutz: *From what I gather that smaller building was in the commercial piece of it and it looked a little odd to me but we are not talking about the use yet. I think there has not really been enough discussion about whether this should be rezoned or enough rationale for doing it at this point.*

Bateman: *I was on the planning board when Richard was planner and we went over this and if you had asked me before Joe did his presentation whether this was commercial or residential I would have told you residential. I do not know how it got changed either. Might have been something that Ward (McCreedy) ... because he was so much ...*

Mayor Perry: *Ward was gone then.*

Reid: *Ward was gone but the problem ... I tell you where I am coming from ... I had retired before this plan was actually adopted and we had a new planner and she moved it on through to completion. There might have been some time in there which I was not privy to the discussion or*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 16

how it got that way but ... and I guess the other thing I would add to somebody's comment. A lot of the zoning lines were drawn prior to the incorporation of the town. When the town incorporated my understanding is the town adopted the existing Dare County code and the map. Then in the mid-eighties there were adjustments but I do not know that there was any major adjustments to the commercial other than at one point the addition of the Wal-Mart site. The logic there, it is my understanding, the rationale was that that would accomplish and provide the maximum amount of commercial that a town the size of Kitty Hawk would need for the future. It was very strongly felt through the years when I was working for the town that we did not need expanding commercial. We had the appropriate amount of commercial for our community. I may be wrong but I suspect the day care might have been there and this was all done under the county's supervision at that time.

Bateman: *What I was going to add was that the one Land Use Plan I remember working on, and Ward was here, and we had Mr. Turner came in and we took a very long time and we went over every area. We would look and ask do we want this to be commercial or do we want this use here. The underlying final analysis was never change residential to commercial.*

Mayor Perry: *And I think if we were to do that we would need to do it in the context of doing the new Land Use Plan and not just every request that comes in to do it.*

Bateman: *That is what we have told other folks who have asked to get residential changed to commercial for different reasons.*

Mayor Perry: *That is what Richard told two different people north of us. Come in and get it done during a Land Use Plan update. What floored me is they also ... the beach hotel ... they also put it future BC-1 the way it is colored.*

Klutz: *In the legend they have for it they do not have something that says hotel. They just colored it in as commercial.*

Reid: *The Land Use Plan is more general. In other words it says commercial uses and then when you get into zoning individual property you can get into the specifics of each district. You do not lay out the Land Use Plan just to match the zoning is what I am saying.*

Klutz: *What it is doing in effect is documenting what it is because it is a hotel and that is still a commercial activity.*

Reid: *I have to go back to the ... what I was basically told is that the thinking on the planning initially was there would be two sites in the Town of Kitty Hawk for hotels. One was at the north end and one at the south end but that property was already developed as a trailer park. So it has been zoned Beach Hotel One but it is ... again, it is grandfathered. I think it is a grandfathered use and the zoning does not match.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 17

Klutznick: *In terms of the Land Use Plan it would not have been shown as residential because there is already commercial activity at that spot when you said earlier that you were trying to document pretty much what was already in the Land Use Plan.*

Reid: *Right.*

Mayor Perry: *But where it says future Land Use Plan it leaves the hotel out and shows possible commercial.*

MPT Perry: *If you rezone that particular part of BR-2 to something commercial, regardless of what comes next, a number of things could go in there that would impact not well with the BR-2 residential. You would be changing residential regardless of what happened before the town incorporated. The town incorporated in 1981 and I will tell you a little history because I went back and studied the minutes as most of you know. In 1986 there was the big zoning change. It was so contentious the entire planning board quit en masse. One councilmember quit in disgust. So that gives you some point of where we are today and how we got there and how contentious getting to that point was. If you study the history of that, most of that contention dealt with keeping it low medium density. That is what everybody wanted and there were places where people had trailers and things and they were just locked out. That was what happened. I am not going to vote to change the zoning and I am prepared to make a motion if we are so ready.*

Mayor Perry: *Anybody else have anything to say before he makes a motion?*

MPT Perry made a motion to deny this application to rezone the remaining portions of the property at 108 West Sibbern Drive from Beach Residential, BR-2, to Beach Commercial, BC-1, although the future Land Use map designates the subject property as a commercial shopping and working area. Town council finds that this rezoning application is inconsistent with the stated goals, policies, and intent of the town's adopted CAMA Land Use Plan. The plan generally encourages the character of low to medium density residential neighborhoods and recommends the placement of commercial development in commercially zoned areas. Councilman Reid provided a second and it passed unanimously, 5-0.

b.) Text Amendment: Proposal to add Section 42-250(c)(34) allowing "pet grooming and boarding facilities" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.

Councilman Bateman made a motion to go back into public hearing. MPT Perry seconded and it passed unanimously, 5-0.

Heard: *As I mentioned before, a denial of the rezoning would nullify the conditional use permit hearing which is the third application. However the council can consider the text amendment to allow a pet grooming and boarding facility in the Beach Commercial One district. As proposed*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 18

by the applicant this would add wording to subsection 42-250(c)34 of the town code and it would add an additional use to what is already allowed in that district. The use is described as pet grooming and boarding facilities to include animal shelters subject to the following conditions: 1) a vegetative buffer from residential areas; 2) the animals be boarded inside the building; 3) setting hours when the animals could be outside from 7 a.m. to 9 p.m.; 4) supervision of an attendant when animals are outdoors; 5) a fence 6 feet in height; and, 6) provisions for dealing with animal waste would all be part of the proposal.

When this was reviewed at the planning board meeting on May 17th, as they did previously, the planning board voted 3-2 to recommend approval of the text amendment to allow this use in the Beach Commercial One district. That is all I have for you this evening.

Bateman: *What is the difference between what these folks want to do and what Coastal Animal Hospital does?*

Heard: *Dr. Taylor, maybe a year ago, established a veterinary office in Ocean Plaza and we have provisions that a veterinarian has to follow. There are a few items outlined in the staff report that they have to follow if they are going to be boarding animals. Typically their boarding is related to an animal that may have had surgery and is just staying overnight. The boarding has been allowed as an accessory use to a veterinary office on that scale as long as it is a relatively small scale to the primary use of the veterinarian office.*

Klutz: *This would be more like a kennel. Somebody is going out of town and they want to leave the dog to board.*

Bateman: *But the point I was trying to make is you can go to Coastal Animal Hospital for that. I drop my dogs off, go out of town on vacation for a week, and leave them there. I also have them groomed there. To me there is no difference.*

Reid: *I disagree. There is a big difference. The stipulations under this district for a veterinary hospital or clinic say "no animal shall be kept or boarded outside the principle building." I think there is a big difference between having a vet who may keep an animal overnight for surgery or whatever versus 63 dogs that would be there for extended periods of time. Boarding is different than when a vet might have some for overnight. The second vet that is in town is in a strip mall and I believe one of the stipulations on that application at the time, because he had very limited space, is there would be no overnight boarding of animals at that vet facility. So Coastal is the only one in town that would allow it.*

Michael: *Does anyone want to speak to this proposal? This is strictly adding the text amendment to allow the grooming and boarding facility in the BC-1 zoning district. Come up please and identify yourself again.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 19

Stan Clough, 1104 9th Avenue, Kill Devil Hills, NC: *The east building is zoned BC-1. The zoning line is not on the property line and even without changing the zoning the east building could still be operated as the canine resort. And it is not going to be the type of place where there are going to be outdoor runs. If you looked at the site plan there is an actual survey done of the existing property. It basically does not modify anything, not building outdoor pens. The dogs would not be left outside. There would be an attendant when they are outside. If we were to have the ability to operate that business there it would not be a problem for the business operator. If you left the zoning as it is it would still ... like I said nothing is basically going to change on the buildings it would just be rehabilitated. Basically it has sat there for years and there was some talk at the ... the east building I know the first one was actually built before the town was incorporated. I found very few records of it and the second building was built right as the town was being incorporated I believe. I cannot think of anything else I need to address but as far as smells and stuff, Pam the business operator, could address some of that. I will leave that to her but as far as ... be changing very little on the site plan if you looked at the actual survey that was done. We would put the fence that is required ... any requirements and I think we can address any concerns that any of the neighbors would have. There was some mention of lighting and there would not be any obnoxious lighting added. The minimal lighting that is there now would be sufficient actually for coming and going. There would not be any spotlights or parking lot lights or anything. Thank you.*

Michael: *Anyone have any questions for Stan while he is up here? All right thank you.*

Mrs. Brinn asked if she could address council at this time.

Michael: *If you want to come up and ask the council to reconsider your comments you made earlier that would be fine.*

Michelle Brinn, Chesapeake, VA: *And answer any questions or comments on the comments I made earlier. About the vegetative buffer ... I was talking about the elevation because our cottage sits up higher therefore even if you have the buffer you are going to see the overlook. I know with the children we could hear, when the wind blew a certain direction, you can hear the sound of the children playing. I know you will hear the sound of the dogs barking as well. You have to have lights for runs and pens and if you are open for 24 hours ... surveillance ... with someone there an attendant while in use and when you are open from 7 a.m. to 9 p.m. there is going to be extra traffic with lights coming in. Even if you have visitors here that are visiting the Outer Banks who are dropping off their pets for boarding if they cannot take them to a cottage they have rented or something ... All of my comments I made earlier, still the smell, the ... I know you have a waste disposal and all that in place that you have but I still have concerns about all that. Thank you for your time. Any questions of me?*

MPT Perry: *Thank you for coming.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 20

Brinn: *Thank you for having me, I do appreciate it. And the information that was provided to me thanks.*

Michael: *Does anyone else want to speak on this text amendment? That seems to be all.*

MPT Perry: *I have some questions. And first thing, we all have to remember, if we change this text amendment it allows it anywhere in BC-1, not just here. That is an important consideration. Anywhere in Kitty Hawk that is BC-1, something like this could happen. We denied a rezoning which means that we are now talking BC-1. The western part of that is out of the picture. Is that correct?*

Heard: *That is correct.*

Mayor Perry: *But what we are talking about right now is not the text conditional use permit. We are only talking about the text amendment to allow it in any BC-1 area district.*

MPT Perry: *Okay, but I am getting to the buffers.*

Mayor Perry: *But this does not apply to that site. It applies to the whole BC-1 zone anywhere in town.*

MPT Perry: *It creates a problem trying to separate the two.*

Mayor Perry: *It really does but we are not talking about what the conditions are. We are talking about allowing it in any BC-1 zone at this point. If we allow it then we will go back to the other which is confusing.*

Bateman: *It seems to me this use is allowed in this zone already when it is associated with a vet.*

Mayor Perry: *It has to be associated with a vet. That is very clear. It has to be part of a veterinarian hospital.*

Bateman: *In essence it is already allowed in this zone is the point I was trying to make. We already have it in this zone. And that does not mean I am going to vote for it. I am probably not going to because I do not think it is good in the area.*

MPT Perry: *Let's get out of the public hearing first.*

Mayor Perry: *Any more comment? A motion to go to back into regular session?*

Councilman Bateman made a motion to go back into regular session. MPT Perry seconded and the vote was unanimous, 5-0.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 21

Klutz: *If we are already doing this as part of a vet I think it is something that is not very clear to me. I look at this use, not as part of a veterinary practice but rather boarding and exercise for the dogs. I think they even call it a canine resort. That does not track with a veterinary practice. I think what I hear you saying Ervin is the veterinary practice will board your dog whether he is being treated. They will also board your dog if you are going on vacation and then you come back and he is all groomed and fluffy. That service is being provided as part of the veterinarian practice even though it does not really require medical attention for the dog.*

Mayor Perry: *But I think it has to be a veterinary practice in order to do it.*

Klutz: *And I would say it would be on a smaller scale than what we are talking about.*

MPT Perry: *When I transferred to Hawaii I had one cat and one dog. The animal folks came to the plane when we landed in Hawaii and took those two animals for four months of quarantine each. It cost me \$400 by the time I got through with quarantine for the cat and the dog was the same dollar amount and he was a "sooner." Come visiting day, they have regular visiting days, amazing to me. When I went out there people would stand in line to get to their animals and stay in the cage all day with them. But the point I am about to make is we would go down to visit once in a while and you could hear those dogs yapping two miles before we got there with the windows closed and the air conditioner running. Now when you have a house full of dogs you are going to get noise and it is going to be a lot of noise. After 4 months that dog had lost his yapper. All he could do is croak because he just barked and barked and every one of them did the same thing. And whether they are inside or outside the noise is just untenable to neighbors. If we do this for the BC-1 zone we are impacting neighbors and businesses alike and I cannot go there. I know how it is going to affect neighbors and I do not want to be the one that gets the call saying you let this happen. It is not happening on my watch.*

Mayor Perry: *And it could be next door to anybody that is next door to a BC-1 Zone. That is what bothers me.*

Reid: *This is something that disturbed me. When I read all of the papers, at least to my knowledge, there is nothing that addresses the noise issue. I have been over to Dare County to their facility and you can hear it as you drive to it. You hear the barking. Under our existing ordinance the veterinarian hospitals are a conditional use in the BC-1 so that can be next to a neighbor but it says "the principle building shall be constructed in such a manner and with such materials as to prevent any noise originating from the facility from being heard beyond the approved site boundary line." And then it goes on and talks about the architecture and so forth. There was no discussion that I read in the minutes or in the proposal that addressed the noise issue and that was the first thing that hit me. There is no way those existing buildings were designed to deal with the noise of barking dogs.*

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 22

Klutz: *The BC-1 district is sprinkled all over the beach. All the way down the beach road and it is because if there was a business on the block the whole block was zoned BC-1 at the time the zoning was done.*

Mayor Perry: *And they are just small parcels.*

Klutz: *I do not think this is really compatible with that district.*

Bateman: *I made my point a while ago about the veterinarians but I cannot support this because of the noise and all. I do not want to open the door in the rest of the zone for this.*

Mayor Perry: *That is a major problem for me, opening the door to anywhere else in the zone. If everybody is finished we need a motion.*

Councilman Reid made a motion to deny the text amendment that was proposed to add Section 42-250(c)(34) which would have allowed pet grooming and boarding facilities as a conditionally permitted use in the Beach Commercial BC-1 district. The town council finds this amendment not to be consistent with the town's adopted CAMA Land Use Plan and not in the public interest. MPT Perry made a second and it was unanimously approved, 5-0.

c.) Conditional Use Permit: Application for a conditional use permit application to renovate the existing buildings on the former Sea Me Grow day care property at 108 W. Sibbern Drive for use as a pet grooming and boarding facility.

Mayor Perry then announced there is no need to hold the public hearing for this conditional use permit because it is not allowed in the district.

9. RETURN TO REGULAR SESSION

Council action for public hearing items may include approval, denial, approval with modifications, or tabling action.

Action was taken after each hearing.

10. PLANNING

a.) Call for Public Hearing. Text Amendment: Proposal to add Subsection 42-250(c)(34) allowing "electronic gaming operations" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the August 6, 2012 Town Council meeting.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 23

b.) Call for Public Hearing. Text Amendment: Proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments, provided that certain criteria are met. A public hearing is requested to be scheduled for the August 6, 2012 Town Council meeting.

Councilman Reid made a motion to call for a public hearing for a text amendment proposal to add Subsection 42-250(c)(34) allowing electronic gaming operations as a conditionally permitted use in the Beach Commercial One district subject to certain conditions and set the public hearing for the August 6, 2012 town council meeting. The second item is for a public hearing for a text amendment proposal to add wording to Subsection 42-129(7) to allow an increase of density for nonconforming, multi-family residential or group developments provided that certain criteria are met and set the public hearing for the August 6, 2012 Town Council meeting. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.

11. UNFINISHED BUSINESS

There was no unfinished business.

12. NEW BUSINESS

There was no new business.

13. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Charter Cable Update – Manager Stockton said he and the town attorney met with three representatives from Charter and discussed the complaints that had been submitted to them for resolution. Mr. Corrin, with government relations, said all complaints have been taken care of. There was a question about Councilman Bateman's complaint and someone should be contacting him to discuss the concerns. They were provided with names and phone numbers that can be used for future complaints about their service. They asked for the 800 number to be used first and if the complaint is not resolved then the individuals can contact the town hall for help. They also asked to come before the council in August to give council a brief overview of what they are trying to do to improve the service in Kitty Hawk.

b.) Pedestrian Signal at Juniper Trail and US 158 – Manager Stockton reported he was informed by Jerry Jennings, NCDOT Division Engineer, a pedestrian signal is more desirable at Cypress Knee Trail and US 158 instead of Juniper Trail and US 158 because of the width of the roadway. They have made a preliminary design and the funding for the construction should be released in a couple of weeks.

c.) Purchase of Ocean Rescue Truck – Manager Stockton said he sent information to council on Friday about the fire department's request to replace their pickup truck for Ocean Rescue.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 24

The low bid for the truck was \$24,800, \$4,499.74 for lights, sirens, strobe, wigwag headlight, and \$4069.46 for wench, grill guard, and tool box for a total price \$33,369.20. Three different vendors were contacted for bids.

Chief Spivey said the 2001 pickup that is in reserve and reported about during the budget workshops is in bad shape including the exhaust and brake system and the chassis has considerable rust under it. It is not a viable vehicle to try to keep in service. Once the new truck is purchased, the 2006 truck would move into reserve status.

Councilwoman Klutz made a motion to recommend approval of the purchase of the 2012 Ford F150 4x4 from Hall Ford of Elizabeth City for a price of \$24,800 plus \$4,069.46 for auxiliary equipment from Truck Accessory Center, and \$4,499.74 for auxiliary equipment from Gateway Communication for a total expenditure of \$33,369.20.

Councilman Bateman asked what happens to the equipment that is in the vehicle now and Chief Spivey said the radios will be taken out and put into the new truck. Everything else on the truck is unserviceable.

Councilman Bateman seconded the motion and it passed unanimously, 5-0.

14. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

731 W. Kitty Hawk Road Property - Attorney Michael reported the town has started to clean up the outside of Mr. Overton's property and there has been preliminary research on who might own it. They have been in touch with Clarence Carawan who indicated he probably is Mr. Overton's closest and maybe only remaining relative.

The Clerk of Superior Court has talked to Mr. Carawan, he has talked with him, and Mayor Perry has talked with him as well. Mr. Carawan has been clear that he wants to donate the property to the Town of Kitty Hawk. Everyone understands there is probably going to be a considerable amount spent on the property. Mr. Carawan is prepared to sign a special warranty deed conveying whatever interest he has in the property to the Town. Later research might disclose there may be another heir or a will might be found. The council needs to adopt a resolution authorizing the acceptance of that deed from Mr. Carawan subject to those conditions.

Mayor Perry asked what would happen if another owner is found and Attorney Michael said if they became a co-tenant any amount the town had expended for the property the town is entitled to recover half of it. And any liens on the property go with the property, it does not go with the person.

MPT Perry asked if a resolution is needed or would a motion suffice. Attorney Michael replied a motion to accept the donation of the property by Mr. Carawan is all that is needed.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 25

MPT Perry said “so move” to accept the donation. Councilman Reid seconded the motion and it passed unanimously, 5-0.

Attorney Michael added Mr. Carawan is meeting his paralegal at the courthouse tomorrow morning to sign the deed. It will be recorded tomorrow and then discussions can begin on what to do next.

15. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Multi-Use Path Along the West Side of US 158 from Wal-Mart to the Kill Devil Hills Town Line

Councilman Bateman said he noticed young children riding their bikes along the bypass and cars whizzing by them. He was concerned about their safety and asked council to think about applying for federal money to build a path on the west side of the bypass from Wal-Mart to Kill Devil Hills. It would make for a much safer community.

Councilman Reid wondered if they would use it citing some bicyclists do not use the bike path along The Woods Road.

Councilman Bateman agreed some cyclists weave back and forth on the roads but some are traveling 25 mph and have no business on the bike path. The paths are mainly for those on beach cruisers. He would work with staff and lobby anyone he could if council agreed.

Mayor Perry said it is very disturbing when people are standing in the middle lane waiting on traffic to get to the other side of the highway. He did not know what could be done about it.

Planning Board Public Notification

MPT Perry brought forward the memo from the planning board chairman wherein he asked about public notification for the planning board meetings. He wondered if it might bias a planning board member or members if somebody attends and makes objections. It is his understanding the planning board members are there as volunteer citizens solely to see if plans meet the existing code.

Attorney Michael added they are an advisory body only but council could delegate to the planning board and let them hold public hearings. Again, if they hold a public hearing they are still only making an advisory recommendation to this board.

Mayor Perry commented that is the way it was done several years ago when judicial type public hearings were held. If council accepted that public hearing council would not hold another hearing. He said he does not mind the public being notified about a rezoning or a conditional use

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 26

as long as there is not conversation being held. Allowing them to speak at the public comment section at the beginning of the meeting might be helpful.

Attorney Michael said that is something the planning board discussed. Moving the public comment to the beginning of the meeting so anybody who wanted to speak to issues they were going to consider that night would have an opportunity to present.

Councilman Bateman said he does not mind having public comment at the beginning of the meeting but the planning board makes their decisions on planning rationale and the Land Use Plan. It does not matter what the public says.

Councilwoman Klutz agreed that is the way it should be and would hate to think the public would come to a meeting after being notified and think they will be able to influence the outcome. They could walk away angry. The planning board would have to be very careful and explain to the public that there is an opportunity for them to talk at the beginning of the meeting and there would be no further interaction with the public for the remainder of the meeting. It would be good for them to hear the discussion and learn what the standards are and what the planning board's recommendation is based upon. That is very healthy. They are better informed when they make comments to the council and it is the council who has more discretion to take into account the public's opinion.

Councilman Reid said he has worked in Virginia where it is a different system and most counties there have a public hearing at the planning board level and a public hearing at the council or supervisors level. The citizens have an opportunity to state their opinions twice. In North Carolina the planning boards are basically technical or semi-technical in evaluating plans. Sometimes citizens do not understand that and feel as if the planning board ignores them. It can cause a lot of hostility or difficulty. After reading the memo he thought it would help with transparency and has no problem with notification.

MPT Perry said it sounds as if in order to avoid hard feelings perhaps the policy should be to allow the public to speak at a public comment section but no further and asked what type of notification is done and what is proposed.

Planner Heard replied there is no advertisement or specific marketing that goes out related to a proposal. The only item that goes out is the agenda of the board and it is posted on the public notice board at the town hall and on the website.

Mayor Perry said when something has to be published in the newspaper it is usually very small and many cannot read it or pays any attention to it. The text amendment hearing that was held earlier was a huge item and people need to understand how any amendment might affect them.

Councilwoman Klutz said she could speak for those that live near the beach in the BC-1 district and they are surprised to learn they live in a commercial district.

Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 27

MPT Perry asked for a consensus for the chairman to be told the public comment period is acceptable but a public hearing type setting is not.

Councilmembers agreed.

Planner Heard asked if the board could advertise in some way. Not with a newspaper ad because that is very expensive but with a direct mailing to any affected property owners. The same people it is sent to when the council holds a hearing.

Mayor Perry said there are not that many during the year.

MPT Perry said it sounds like council is good with the direct mailing and holding the public comment period. Whoever shows up at the public comment needs to understand the planning board is technical and not emotional. Please make that clear.

Public Notice Signs

MPT Perry said he believes the public notification signs that are posted on affected property are too small and suggested enlarging them.

Mayor Perry asked about the size of political signs and MPT Perry suggested something larger than that.

Planner Heard said he would look into something around the size of real estate signs.

Resolution In Opposition to Requested Dominion North Carolina Power Rate Increase

Mayor Perry said council has received a resolution from Kill Devil Hills about the increase in rates and asked if council is interested in sending one in also.

Councilwoman Klutz said she does not know how much good it will do but maybe it should be done to show support for another town. She had read the resolution and it is fairly harmless

Mayor Perry asked council if he had their permission to sign and send it off after Emilie has proofed it.

Councilman Bateman said you have it and MPT Tem Perry said "so move." (There was no second and no vote.)

16. PUBLIC COMMENT

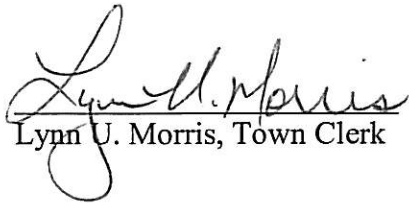
There was no public comment.


Kitty Hawk Town Council Minutes: July 2, 2012 Regular Meeting
Page 28

17. ADJOURN

MPT Perry “so move” to adjourn. Councilman Reid seconded and the vote was unanimous, 5-0. Time was 7:56 p.m.

These minutes were approved at the *August 6, 2012* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor